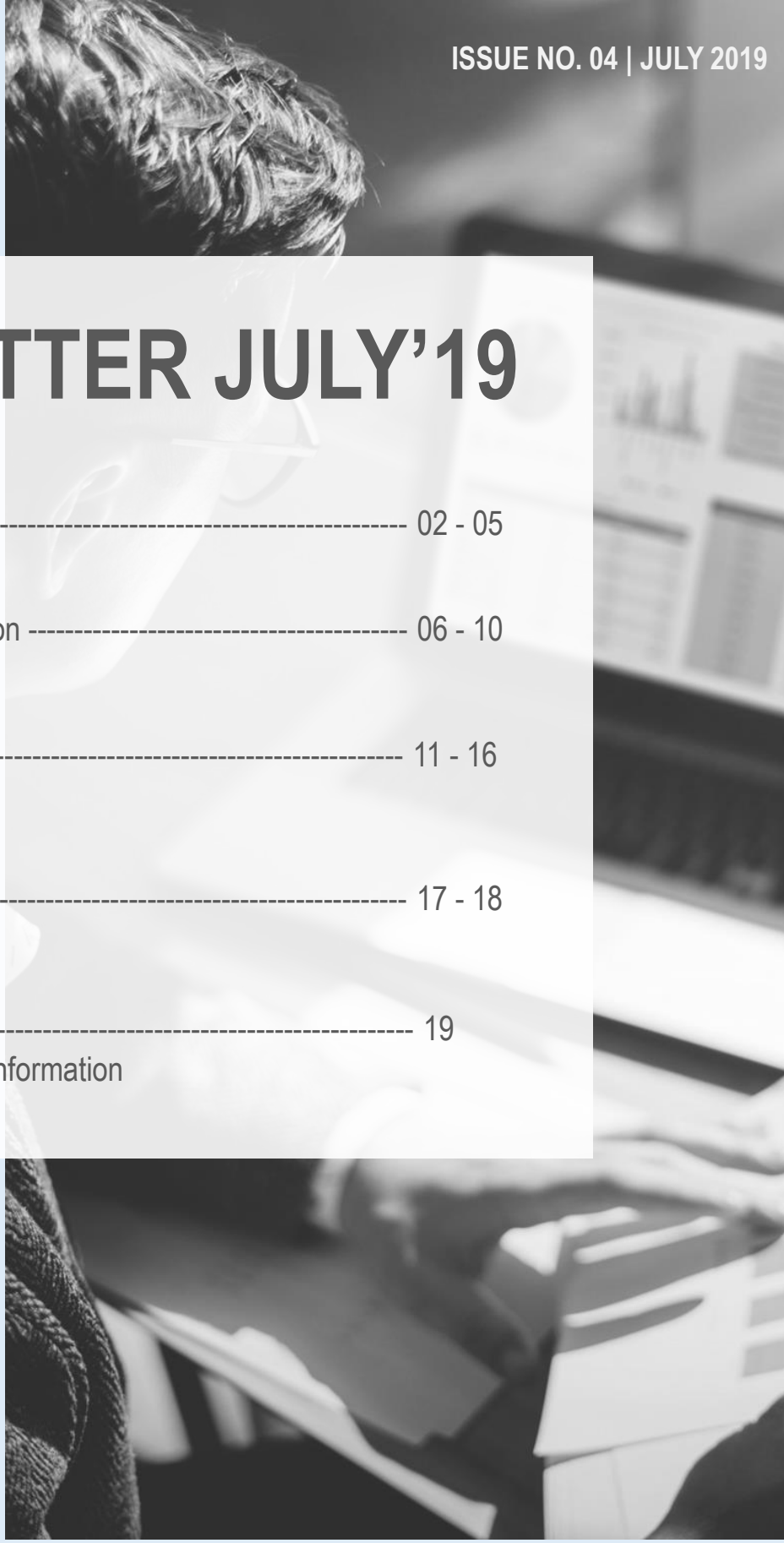
ISSUE NO. 04 | JULY 2019



NEWSLETTER JULY'19

WHAT'S INSIDE

"It's not the money that matters.
It's how you use it that determines it's true value!"

INCOME-TAX CASE LAWS

The Pr. CIT V. Maruti Suzuki India. Ltd [2019] 107 taxmann.com 375 (SC)

Issuance of Jurisdictional notice and assessment order in case of non-existing company being a amalgamating company is illegal.

FACTS

1. On 28 November 2012, the assessee filed its return of income for A.Y. 2011-12 declaring an income of Rs. 2.12 Crores. The return of income was filed in the name of Suzuki Powertrain India Limited (SPIL) (no amalgamation having taken place on the relevant date). Subsequently On 29 January 2013, a scheme for amalgamation of SPIL and Maruti Suzuki India Limited (MSIL) was approved by the High Court with effect from 1 April 2012. By virtue of the scheme, SPIL, the amalgamating company got merged into MSIL, the amalgamated company.

2. On 26 September 2013 the case was selected for scrutiny by the issuance of a notice under Section 143(2) followed by a notice under Section 142(1) to the amalgamating company. Thereafter on 11 March 2016, a draft assessment order was passed in the name of SPIL which sought to increase the total income by Rs. 79 crores crores in accordance with the order of the TPO in order to ensure that the international transactions with regard to the payment of royalty to the Associated Enterprises is at Arm's Length. Various contentions were filed by the assessee in response to the same.

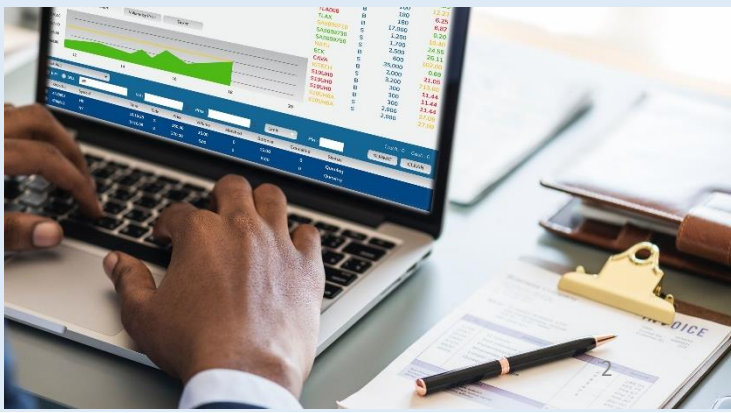
3. The final assessment order was passed on 31 October 2016 in the name of SPIL making an addition of Rs. 79 crores to the total income of the assessee.

4. Aggrieved by the same the assessee preferred an appeal before the Tribunal by raising an objection that the assessment proceedings were continued in the name of the non-existent or merged entity SPIL and that the final assessment order which was also issued in the name of a non-existent entity, would be invalid.

5. Considering it as void ab initio, having been pressed in the name of a non-existent entity by the assessing officer the Tribunal set aside the final assessment order.

6. The decision of the Tribunal was affirmed in an appeal under Section 260A by the Delhi High Court.

7. Aggrieved by the same the Revenue filed an Special Leave Petition in the Supreme court.



HELD

1. Referring to the sequence of events which took place, The Delhi High court gave reference to the verdict of the supreme court which held in Spice Entertainment that an assessment framed in the name of the amalgamating company, which ceased to exist in the eyes of law, was invalid and untenable in law. Such a defect would not be cured in terms of Section 292B of the Act. Further, the fact that the amalgamated company participated in the assessment proceedings would not operate as a evidence.

2. High Court noted certain significant facets of the case:

- Firstly, the income which is sought to be subjected to the charge of tax for AY 2012-13 is the income of the erstwhile entity (SPIL) prior to amalgamation. This is on account of a transfer pricing addition of Rs. 78.97 crores;

- Secondly, under the approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities;

- Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations:

- Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or re-organisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."

- Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be

initiated or an order of assessment passed;

- Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);

- Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;

- Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.

3. Considering the above facts and following the decision in case of Spice Enfotainment the Delhi High Court ruled in the favour of the assessee. • Taking the same view, Supreme Court of India found no merit in the appeal filed by the Revenue and accordingly the appeal was dismissed.

4. The appeal of the assesse is therefore allowed.

INCOME-TAX CASE LAWS

Rajan Bhatia v. Central Board of Direct Taxes 2019-TIOL-316-SC-IT (Supreme Court)

Dividend in excess of Rs. 10 Lakhs will be taxed @10%. Companies are kept out of the provisions of Section 115BBDA to avoid the cascading effect on payment of Dividend and Taxation regime applicable to non-residents need not be identical to that applicable to residents.

The SLP against the Order of Delhi High Court was filed which has been dismissed by the Apex Court and thus sustaining the order of Hon'ble Delhi High Court. The facts and the decision of the Hon'ble Delhi High Court is discussed as under –

FACTS

Writ Petition was filed before the Delhi HC on the following 2 issues –

- Challenging the constitutional validity of proviso to section 10(34) along with the provisions of section 115BBDA on the ground that provisions of section 115BBDA is discriminatory as it is applicable to residents only and not to non-residents.

- To stay the operation of the above provisions generally and in particular in relation to the AY 17-18. The provisions under challenge are arbitrary, ultra vires and violative of Article 14 of the Constitution of India

HELD

1. Section 10(34) grants exemption to income by way of dividend referred to in Section 115-O of the Act. The proviso gives primacy to Section 115BBDA over Section 10(34) of the Act.

2. Section 115BBDA is a non-obstante provision that would apply and prevail over Section 10(34) of the Act. Constitutional validity was challenged on the ground that section 115BBDA does not have any base and provision makes hostile discrimination between a resident assessee and a non-resident assessee.

3. The contention that the provision lacks base is on the assumption that clause (a) of sub-section (1) of Section 115 BBDA is ambiguous and vague and does not specify whether the dividend is applicable on the amount in excess of Rs. 10 lakhs or the entire amount where the dividend income exceeds 10 lakhs. The Apex court did not find any merit in this contention as the same has been clearly explained in Memorandum in the form of Explanatory Notes to the provisions of the Finance Act, 2016, relevant extract of the Memorandum is produced - *"14.2 With a view to rationalise the tax treatment provided to income by way of dividend, Section 115BBDA has been inserted in the Income-tax Act to provide that any income by way of dividend in excess of ten lakh rupees shall be chargeable to tax in the case of an individual, HUF or a firm who is resident in India, at the rate of ten per cent"*

We are of the firm view that the interpretation given above is the only reasonable and plausible interpretation to be given to clause (a) to sub-section (1) of Section 115 BBDA of the Act. Therefore, Dividend Income upto to Rs. 10 Lakhs continues to remain exempt and any dividend income in excess of Rs. 10 Lakhs will be taxed @ 10%.

4. The second contention was of hostile discrimination between the residents and non-residents and the exclusion of the Company from definition of persons for the purpose of section 115BBDA. In a taxation legislation, the Legislature and Executive have the right to identify the persons who have to be taxed. Taxation invariably is a matter of policy and the court is not to examine and comment on the wisdom of such decisions. Companies are required to pay DDT on distribution of Dividend to Shareholder and the reason why they have been left out resulting into prevention of the cascading effect when dividend is finally paid to the shareholders.

5. Non-residents invest in India and contribute to the growth of industrialization, job creation and economic progress. The Legislature/Executive as a matter of policy decide how and in what manner non-residents should be taxed. Taxation at source principle may not be applied to non-residents. Taxation regime applicable to non-residents need not be identical to that applicable to residents.

6. The writ was thus dismissed.

INTERNATIONAL TAXATION CASE LAWS

M/s. Faurecia Automotive Holding Vs. DCIT, International Taxation, Pune [Pune ITAT] [AY 2011-12] [ITA No. 784/PUN/2015]

Reimbursement of Cost

Once the amount paid by the Indian entity was and had been actually charged to tax under the head `Salaries' in the hands of real recipient, that is, the expatriate in the present case, then going by the command of the second exception in the Explanation 2 to section 9(1)(vii), the same cannot be treated as `Fees for technical services' in the hands of the non-resident entity

Consideration for Technical & Managerial Services

IT support services rendered by the Assessee, which are otherwise technical in nature, do not involve any imparting of information concerning technical, industrial, or commercial knowledge to Faurecia, India. The same being a mere rendering of services, cannot be brought within the scope of section 9(1)(vi) of the Act

The total amount received by the Assessee for rendition of services to Faurecia India, which was a mixed bag of Managerial and Technical services, did not eventually make available any technical knowledge, experience, skill, know-how etc. to the India entity and hence the same could not be considered as `Fees for technical services' under Article 13(4) of the DTAA with France

Issue No. 1 : Reimbursement of Cost – Whether taxable as Fees for Technical Services (FTS)?

FACTS

1. The Assessee company, tax resident of France was engaged in designing and building dashboards, door panels, floor coverings, sound proofing & insulation installations and other moulded plastic parts for passenger car interiors. The Assessee filed its return declaring NIL income

2. The Assessee received a sum of Rs. 47,30,250/- from Faurecia Technology Center India Limited (hereinafter called `Faurecia India' or `Indian entity') and stated that this amount was in the nature of reimbursement of expenses received from the Indian entity which was not chargeable to tax. As per the secondment agreement, Mr. Franck was to render services to the Indian entity. A sum of Rs.47.30 lakh from his salary was paid in France directly by the Assessee company, which was later on reimbursed by the Indian entity without any mark up

3. The AO held that the Assessee provided technical services through its staff and hence, the amount was liable to be considered as "Fees for technical services" in terms of section 9(1)(vii) of the Act and also Royalty under Article 13 of the Double Taxation Avoidance Agreement between India and France (hereinafter also called `the DTAA'). The Assessee remained unsuccessful before the DRP as well.

4. Aggrieved, the Asssessee approached the Tribunal.

HELD

The Tribunal held as follows:

1. As per Explanation 2 to Section 9 (1) (vii), any consideration received by a non-resident from rendition of managerial, technical or consultancy services shall be considered as fees for technical services. If however, such an amount in the hands of recipient is chargeable to tax under the head `Salaries', then it would shed the character of `Fees for technical services'.

2. Mr. Franck Euvrard was engaged by Faurecia India as its CEO. Like any other employee, his remuneration was directly fixed by the Indian entity which included Basic salary, House rent allowance, Other allowances etc. He was also entitled to the Provident Fund and superannuation benefits.Mr. Franck Euvrard was working under control, supervision or direction of Faurecia India. The Indian entity deducted tax at source from total salary paid to M/s. Franck Euvrard, which also included the amount which was initially paid by the Assessee in France but later on reimbursed by Faurecia India on cost to cost basis, which constitutes filament of the extant controversy

3. From the income tax return of Mr. Franck, it was observed a sum of Rs.47.30 lakh which was initially paid by the Assessee to Mr. Franck Euvrard as a part of salary payable by Faurecia India in terms of his employment with the Indian entity, had been assessed to tax under the head "Salaries" in the hands of Mr. Franck Euvrard

4. The second exception in the definition of `Fees for technical services' under the Explanation states that the consideration would cease to be fees for technical services if it is income of the `recipient' chargeable under the head `salaries'. What is vital to note with reference to the word `recipient' in the provision is the real recipient and not the literal recipient. If the real recipient is the expatriate in his own right because of his employer-employee relationship with the Indian entity, but in a given situation, the non-resident entity just acts as a post office in paying some amount to the expatriate and then receiving it back from the Indian entity on cost-to-cost basis, then the nature of amount from the angle of taxability within the second proviso in the Explanation would have to be viewed in the hands of the real recipient, that is, the expatriate and not the non-resident entity.

5. Mr. Franck Euvrard was engaged by the Indian entity as its own employee, subject to all the terms and conditions of its own employment. There was nothing like any cloak in the arrangement under which the real recipient of the amount had been suppressed and a façade had been shown. Once Mr. Franck Euvrard had been found to be the real recipient, the chargeability of the amount had to be seen in his hands only. Once the amount paid by the Indian entity was and had been actually charged to tax under the head `Salaries' in the hands of real recipient, that is, the expatriate in the present case, then going by the command of the second exception in

the Explanation, the same cannot be treated as `Fees for technical services' in the hands of the non-resident entity.

6. Thus, the Tribunal held that sum of Rs.47,30,250/- received by the non-resident Assessee from the Indian entity was not chargeable to tax in its hands as the same is in the nature of reimbursement of cost and does not fall within the purview of `Fees for technical services' u/s. 9(1)(vii) of the Act.

Consideration for Technical & Managerial Services – Whether Royalty or FTS?

FACTS

1. The Assessee received a sum of Rs.2,66,72,222/- from Faurecia India towards provision of Global Information Support services. The same was not offered to tax.

2. The Assessee submitted that it provided assistance to run operations, giving technical support and providing studies for adaptation of Information System to meet users' needs, which did not make available any technical knowledge, experience, skill or knowhow etc. to Faurecia India and hence, the same did not fall within the meaning of "Fees for technical services" under Article 13 of the DTAA with France read with para 7 of the Protocol.

3. Considering retrospectively inserted Explanation below section 9(2) of the Act and clause (iv) of Explanation 2 to section 9(1)(vi), the AO opined that the amount received by the Assessee was in the nature of Royalty. He further held that the amount received by the Assessee was also `Fees for technical services' as per Explanation 2 to section 9(1)(vii) of the Act. The DRP did not interfere with the impugned order which had brought the Assessee before the Tribunal.

HELD

1. The Tribunal analysed the Service Agreement, wherein the Assessee agreed to supply the Indian entity services in one or several of the following areas i.e. General Management, Sales and Marketing, Accounting, controlling and tax, Treasury, Information System, Human Resources, Production purchasing, etc., which fall in the overall realm of Managerial services. In addition to the above, the Assessee had also rendered IT support services which are largely in the nature of technical services.

2. With regards to whether the receipt can be considered as "Royalty" under Section 9(1)(vi), the Tribunal analysed as follows: -

- The term `Royalty' has been defined in Explanation 2 which has six clauses

- The case of the AO was that the Assessee received Royalty in terms of clause (iv) of Explanation to section 9(1) of the Act, which provides that any consideration for "(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill' shall be considered as Royalty

- This word does not connote rendering some services involving technical,

industrial, commercial or scientific knowledge etc. Rather, it refers to imparting of information regarding some technical, industrial, commercial or scientific "knowledge, experience or skill"

- The same refers to providing some technical, industrial or commercial knowhow etc. to be used by the recipient and not consuming it as such as a service received
- In view of the foregoing discussion, it becomes evident that the IT support services rendered by the Assessee, which are otherwise technical in nature, do not involve any imparting of information concerning technical, industrial, or commercial knowledge to Faurecia, India
- The same being a mere rendering of services, cannot be brought within the scope of section 9(1)(vi) of the Act
- Thus, the amount received by the Assessee is not in the nature of Royalty

3. With regards to whether the receipt can be considered as "Fees for Technical Services" under Section 9(1)(vii), the Tribunal analysed as follows: -

- The nature of services rendered by the Assessee to the Indian entity were technical as well as managerial services. That being the position, the transaction is caught within the scope of `fees for technical services' u/s.9(1)(vii) of the Act
- As per Section 90(2), if there is a conflict between the provisions under the Act and the DTAA, the Assessee will be subjected to the more beneficial provision out of the two
- Definition of the expression `Fees for technical services' under Article 13 of the India France DTAA is by and large similar to that given in section 9(1)(vii) of the Act to this extent, which does not directly support the case of the Assessee
- In view of the MFN clause in the Protocol, Article 13(4) of the DTAA with the UK shall overshadow Article 13(4) of the DTAA with France and limit the scope of the DTAA with France to the extent provided in the DTAA with the UK.
- A reading of Article 13(4)(c) of the DTAA with the UK, when read in place of Article 13(4) of the DTAA with France, deciphers that "Fees for technical services" shall mean any payment for rendering of any technical or consultancy services which `make available' technical knowledge, experience or skill etc. to the recipient.
- In the case of the Assessee, payment for the Managerial services cannot be brought within the scope of the term `Fees for technical services' under Article 13 of the DTAA with France as read in conjunction with the DTAA with the UK
- As far as the remaining Technical services rendered by the Assessee to Faurecia India were concerned, it was seen that these are of coordinating the Information system and assisting Faurecia India in computerisation of systems, office automation and utilisation of personal computers which fall into the aforesaid three categories

namely, Operations, Technical support and Studies. On going through the nature of such services, it was manifested that these do not result in making available any technical knowhow etc. to Faurecia India

- Thus, the total amount received by the Assessee for rendition of services to Faurecia India, which was a mixed bag of Managerial and Technical services, did not eventually make available any technical knowledge, experience, skill, know-how etc. to the India entity and hence the same could not be considered as `Fees for technical services' under Article 13(4) of the DTAA with France when read with the Protocol and Article 13(4) of DTAA with the UK

INDIRECT TAX NOTIFICATIONS

NOTIFICATIONS

Notification No. 33/2019- Central Tax dated 18 July 2019

- All registered person supplying services in multiplex screens has to issue electronic ticket and the said ticket shall be considered as a tax invoice.
- Application in FORM GST PCT-06- Surrender of enrolment.
- FORM GST PCT-07 - Cancellation of enrolment..

Notification No. 35/2019 – Central Tax dated 29 July 2019

The due date for filing FORM GST CMP-08, for the quarter April 2019 to June 2019 by Composition taxpayers for purpose of payment of Self Assessed tax is extended to 31 August 2019.

Notification No. 12/2019- Central Tax (rate) dated 31 July 2019

Clarification and reduction in GST rate on electric vehicles, and charger or Charging stations for electric vehicles.

SCH	S.No	HSN Code	New Rate	Old Rate
I	243B	8504	2.5%	-
I	242A	87	2.5%	6%

Notification No. 13/2019- Central Tax (rate) dated 31 July 2019

"Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.

CIRCULARS

Circular No. 107/26/2019- GST- dated 18 July 2019

Where a supplier supplies services under sub-rule (e) of rule 10 TA of the Income-Tax Rules, 1962 on his own account to his client or the customer of his client, then he is not considered as intermediary.

Where a supplier supplies backend services such as support services, during pre-delivery, delivery and post- delivery of supply etc. to the customer of his client, then his client will be considered as intermediary.

Where a supplier supplies back end services on his own account along with arranging or facilitating the supply of support services during pre-delivery, delivery and post-delivery of supply etc, the ambit of intermediary will depend on the facts of each case.

Where a supplier is not an intermediary, he can avail benefits of export of services under sub-section (6) of section 2 of the IGST Act.

Circular No. 108/27/2019- GST- dated 18 July 2019

Clarification provided of GST issues regarding procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion.

Circular No. 109/28/2019- GST dated 22 July 2019

Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs.7500/- per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

- If aggregate turnover of an RWA does not exceed Rs. 20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs.7500/-per month per member.
- RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than Rs.7500/ per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs.20 lakhs or more.
- RWAs are entitled to take ITC of GST paid by them on capital goods (generators, waterpumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
- A person owns two or more flats in the housing society or residential complex: As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.
- The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs.7500/- per month per member. In case the charges exceed Rs. 7500/-per month per member, the entire amount is taxable.
- For example, if the maintenance charges are Rs. 9000/ per month per member, GST@18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs.9000-Rs.7500] =Rs.1500/-.

LEGAL UPDATES

AAP and COMPANY vs UOI reported in 2019-tiol-1422-hcahm-gst

FACTS

Writ-application has been filed seeking quashing and setting aside of the press release dated 18th October 2018 to the extent that its para 3 purports to clarify that the last date for availing the input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of the return in Form GSTR-3B for the month of September 2018. As per the above clarification, a taxpayer will not be able to claim the input tax credit for the period from July 2017 to March 2018 after filing of the return in Form GSTR-3B for the month of September 2018. It disentitles a taxpayer to claim the input tax credit for the aforesaid period which could not be taken on account of any error or omission.

It is submitted that the aforesaid clarification is not in consonance with Section 16(4) of the CGST Act/GGST Act which provides for the last date for taking the input tax credit. It is submitted that the last date of taking the input tax credit should be due date of filing of return in Form GSTR-3 or annual return whichever is earlier. Section 16(4) of the CGST Act/GGST Act provides that the last date for taking the input tax credit in respect of any invoice or debit note pertaining to a financial year is the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year or furnishing of the relevant annual return, whichever is earlier.

OBSERVATION

Whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act; whether the aforesaid press release is valid and in consonance with Section 16(4) of the CGST Act/GGST Act only if Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act.

HELD

that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed.

Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Rule 61(1) of the CGST Rules/GGST Rules provides that return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3. It would be apposite to state that initially it was decided to have three returns in a month, i.e. return for outward supplies i.e. GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e. GSTR-2 and a combined return in Form GSTR-3

However, considering technical glitches in the GSTN portal as well as difficulty faced by the tax payers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period. It was not introduced as a return in

lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop-gap arrangement till due date of filing the return in Form GSTR-3 is notified. Notifications are being issued from time to time extending the due date of filing of the return in Form GSTR-3, i.e. return required to be filed under Section 39 of the CGST Act/GGST Act.

It was notified vide Notification No. 44/2018-Central Tax dated 10th September 2018 that the due date of filing the return under Section 39 of the Act, for the months of July 2017 to March 2018 shall be subsequently notified in the Official Gazette. It would also be apposite to point out that the Notification No. 10/2017-Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3. However, the Government, on realizing its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No. 17/2017- Central Tax dated 27th July 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.

In view of the above, the impugned press release dated 18th October 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B (for the month of September 2018). The said clarification could be said to be contrary to Section 16(4) of the CGST Act read with Section 39(1) of the CGST Act read with Rule 61 of the CGST Rules.

Amit Cotton Industries Vs PR CC reported in 2019- TIOL-1443-HC-AHM-GST

FACTS

Writ-applicant (Amit Cotton Industries) had exported goods in July 2017. It is the case of the writ-applicant that it is eligible to seek refund of the IGST in accordance with the provisions of the IGST Act, 2017.

However, according to the writ-applicant, without any valid reason the refund has been withheld.

According to the writ-applicant, despite many representations addressed to the respondent no.2, i.e. the Deputy Commissioner of Customs, no cognizance has been taken so far as regards the claim for the lawful refund of the requisite amount Writ-applicant vehemently submitted that there is no legal embargo on availing the drawback at the rate of 1% higher rate on one hand and availing refund of the IGST paid in regard to the 'Zero Rated Supply', i.e. the goods exported out of India, on the other.

It is submitted that the refund ought to have been sanctioned immediately irrespective of the fact, whether the drawback was claimed at the rate of 1% (higher rate) or at the rate

Writ-applicant further submits that the stance of the respondents that the writ-applicant is not entitled to claim refund as the writ applicant had availed drawback at the higher rate in regard to the finished goods exported out of India, is not sustainable in law.

OBSERVATION

It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

In view of the above, the impugned press release dated 18th October 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B (for the month of September 2018). The said

Respondents have fairly conceded that the case of the writ applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writ-applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law. We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies as enumerated in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. In so far as the circular is concerned, apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback

and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the

view that Rule 96 of the Rules, 2017, is very clear.

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In view of the same, the writ-applicant is entitled to claim the refund of the IGST. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

MCA UPDATES

Companies (significant beneficial owners) second amendment rules, 2019:

- In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 90 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Significant Beneficial Owners) Rules, 2018,
- In the principal rules, Form No. BEN-2, shall be substituted,

Companies (appointment and qualification of directors) third amend rules 2019

- Every Director who has been allotted DIN on or before 31st March, 2018 and who has submitted DIR-3KYC E-Form in the previous financial year and no update is required in the details such DIN Holder has to confirm their KYC details by submitting DIR-3 KYC WEB through Web Services on or before 30th September, 2019.
- Further if any details of Director need to be updated then such details shall get update by filing E-Form DIR-3 KYC on or before 30th September, 2019 • Further, if any director who has been allotted DIN on or before 31st March, 2019 has to update their KYC by filing E-Form DIR-3KYC on or before 30th September, 2019.

SEBI UPDATES

Modification of circular dated september 24, 2015 on 'format for compliance report on corporate governance to be submitted to stock exchange (s) by listed entities

- Securities and Exchange Board of India (SEBI) has on July 16, 2019 issued circular regarding format for compliance report on Corporate Governance to be submitted to Stock Exchange (s) by listed entities. The format specified in the annexure to this circular shall replace the format specified in the annexure to the SEBI circular dated September 24, 2015. • The circular shall come into force with effect from the quarter ended September 30, 2019

Modification of circular dated july 18, 2017 on 'disclosure of divergence in the asset classification and provisioning by banks

- Securities and Exchange Board of India (SEBI) has on July 17, 2019 issued circular regarding "Disclosure of divergence in the asset classification and provisioning by Banks". In line with the revised RBI requirements, all banks which have listed specified securities shall disclose to the stock exchanges divergences in the asset classification and provisioning, if either or both of the following conditions are satisfied:

- the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period, and

- the additional Gross NPAs identified by RBI exceed 15 per cent of the published incremental Gross NPAs for the reference period.

- The circular shall come into force with effect from July 17, 2019

Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity

- Securities and Exchange Board of India (SEBI) has on July 19, 2019 issued circular regarding procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity. The format specified in the annexure to this circular shall replace the format specified in the annexure to the SEBI circular dated March 29, 2019.

- This circular shall be applicable with respect to the financial results for the quarter ending September 30, 2019 and after.

Standardizing reporting of violations related to code of conduct under sebi (prohibition of insider trading) regulations, 2015

- Securities and Exchange Board of India (SEBI) has on July 19, 2019 issued circular regarding Standardizing Reporting of violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015. SEBI vide this Circular has provided the standardized format in Annexure A to the circular for reporting violations of the code of conduct by the designated persons and immediate relatives of designated persons. This reporting shall be applicable to all listed companies, intermediaries and fiduciaries.

- The circular shall into force with effect from July 19, 2019.

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